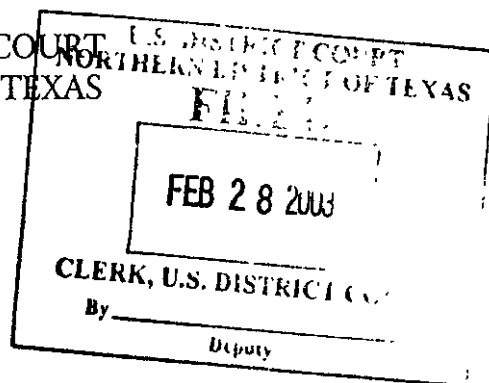


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



IN RE:)
)
JOE GOWDY SLACK,)
)
Debtor.)
-----)
JAMES SLACK,)
)
Appellant,)
)
VS.)
)
HARRY L. CURE, JR., TRUSTEE,)
ET AL.,)
)
Appellees.)

BANKRUPTCY CASE NO.

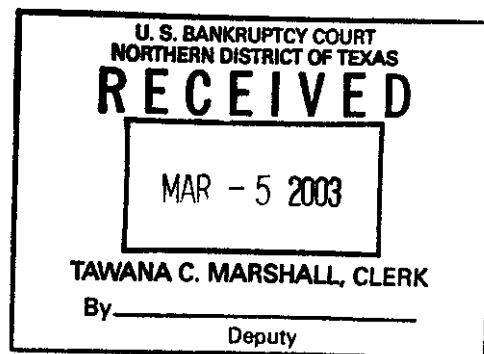
01-70753-RCM-7

02-7006

CIVIL ACTION NO.

3:02-CV-1775-G

MEMORANDUM ORDER



This is an appeal from a final judgment of the bankruptcy court ordering the turnover of \$13,867.84 to the Chapter 7 trustee. For the reasons stated below, the appeal is dismissed for lack of standing.

I. Background and Procedural History

This appeal arises out of a family dispute. Appellant's Record on Appeal ("Record") at 322-326. Joe Donaldson Slack is the deceased father of Mary Webb

("Webb"), Ceil Cleveland ("Cleveland"),¹ James Donaldson Slack ("Slack"), and Joe Gowdy Slack ("debtor"). Brief of Appellee Jeffrey H. Mims, Successor Trustee ("Appellee Brief") at 2. Challenging how his siblings handled and distributed their late father's estate, Slack contested probate proceedings in Georgia and Texas. Record at 10, 323-325. Before these disputes were resolved, the debtor filed for bankruptcy, which automatically stayed further probate proceedings. Record at 10, 324.

On February 22, 2002, the Chapter 7 Trustee, Harry L. Cure, Jr.² ("trustee"), filed an adversary proceeding in the bankruptcy court seeking the turnover of funds belonging to the debtor's estate held in four accounts at Wells Fargo Bank Texas, N.A. ("Bank"). Record 21-23. One of the accounts was solely in the name of the debtor. *Id.* at 22. The remaining three accounts were in the names of the debtor, Webb, and Cleveland for the benefit of their deceased father, Joe Donaldson Slack. *Id.* The aggregate amount sought by the trustee was \$13,867.84. *Id.* Turnover of this amount was the sole relief sought by the trustee. *Id.* at 22-23. The debtor, Webb, Cleveland, and Slack all admitted that the trustee was entitled to this relief. *Id.* at 28-32, 59. However, in his answer, Slack asserted cross-claims against the

¹ In some of the pleadings, Cleveland is referred to as Cecil Cleveland.

² Harry L. Cure, the original Chapter 7 Trustee, died on August 31, 2002, and the United States Trustee appointed Jeffery H. Mims as the successor Chapter 7 Trustee.

Bank, the debtor, Webb, and Cleveland and thereby introduced the still unresolved probate issues into the debtor's bankruptcy proceedings. Record at 33-40.

During the months leading up to the bankruptcy court's final judgment on July 5, 2002, Slack pursued numerous motions related to these cross-claims. Record at 75-80 (request for production of documents); *id.* at 111-113 (motion for continuance); *id.* at 131-142 (motion to compel discovery); *id.* at 176-196 (motion to compel discovery); *id.* at 306-311 (motion for new trial); *id.* at 327-337 (amended motion to compel discovery); *id.* at 370-380 (amended motion to compel discovery). After a trial on June 19, 2002, the bankruptcy court granted the trustee's prayer for relief in the amount of \$13,867.84 based on the admissions of Slack, the Bank, Webb, and Cleveland that the trustee was entitled to such relief. Record at 4-5, 8. The bankruptcy court also dismissed without prejudice Slack's cross-claims against the Bank, the debtor, Webb, and Cleveland for lack of jurisdiction or lack of authority to prosecute. Record at 5, 10-12; Brief of Appellant ("Appellant Brief") at 10. On February 13, 2003, the Bank paid the Trustee \$14,039.38 in satisfaction of the bankruptcy court's final judgment. Notice of Satisfaction of Judgment at 2.

II. Issues on Appeal

Slack now appeals and raises the following issues: (1) whether the bankruptcy court lacked personal jurisdiction over the Bank; (2) whether the bankruptcy court abused its discretion in ruling on Slack's discovery and continuance motions; and

(3) whether the evidence is sufficient to support the relief granted to the trustee.

Appellant Brief at 1-2.

III. Analysis

A. *Jurisdiction*

This court exercises jurisdiction over this bankruptcy appeal pursuant to 28 U.S.C. § 158(a)(1) and Federal Rule of Bankruptcy Procedure 8001. 28 U.S.C. § 158(a)(1); FED. R. BANKR. P. 8001.

B. *Standard of Review*

In reviewing a decision of the bankruptcy court, this court functions as an appellate court and applies the standards of review generally applied in federal court appeals. *Matter of Webb*, 954 F.2d 1102, 1103-04 (5th Cir. 1992); *Matter of Coston*, 991 F.2d 257, 261 n.3 (5th Cir. 1993) (en banc) (citing *Matter of Hipp, Inc.*, 895 F.2d 1503, 1517 (5th Cir. 1990)). Conclusions of law are reviewed *de novo*. *Matter of Herby's Foods, Inc.*, 2 F.3d 128, 131 (5th Cir. 1993). Findings of fact, on the other hand, whether based on oral or documentary evidence, are not to be set aside unless clearly erroneous, and due regard must be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses. *See* Bankruptcy Rule 8013; see also *Herby's Foods, Inc.*, 2 F.3d at 130-31. A finding is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with a firm and definite conviction that a mistake has been committed." *Matter of*

Missionary Baptist Foundation of America, 712 F.2d 206, 209 (5th Cir. 1983) (quoting *United States v. United States Gypsum Company*, 333 U.S. 364, 395 (1948)).

C. Appellant Lacks Standing to Appeal

To have standing on appeal from a final judgment of the bankruptcy court, the party seeking appellate review must be a “person aggrieved” by the bankruptcy court’s ruling. *Rohm & Hass Texas, Inc. v. Ortiz Brothers Insulation, Inc.*, 32 F.3d 205, 210 n.18 (5th Cir. 1994); see also *In re El San Juan Hotel*, 809 F.2d 151, 154 (1st Cir. 1987) (discussing the statutory roots of the “person aggrieved” requirement for appellate standing in bankruptcy proceedings). In contrast to the requirements for general Article III standing, this “person aggrieved” requirement for bankruptcy standing is “more exacting.” *Matter of Andreuccetti*, 975 F.2d 413, 416 (7th Cir. 1992); *Rohm*, 32 F.3d at 210 n.18; *Southern Pacific Transportation Company v. Voluntary Purchasing Groups, Inc.*, 227 B.R. 788, 790-791 (E.D. Tex. 1998). A “person aggrieved” is defined as a party whose rights or interests are directly and adversely affected by the final judgment of the bankruptcy court. *Andreuccetti*, 975 F.2d at 416-417; *Rohm*, 32 F.3d at 210 n.18; *In re American Development International Corporation*, 188 B.R. 925, 932 (N.D. Tex. 1995). Some courts have further narrowed this definition by restricting standing to persons “directly and adversely affected pecuniarily by the order.” *In re Westwood Community Two Association, Inc.*, 293 F.3d 1332, 1335 (11th Cir. 2002) (quoting *In re Troutman Enterprises, Inc.*, 286 F.3d 359,

364 (6th Cir. 2002)); *Spenlinhauer v. O'Donnell*, 261 F.3d 113, 117-118 (1st Cir. 2001) ("The 'person aggrieved' paradigm, which delimits appellant jurisdiction even more stringently than the doctrine of Article III standing, bestows standing only where the challenged order directly and adversely affects an appellant's pecuniary interests.") (citations omitted).

Under the doctrine of invited error, this court concludes that Slack does not qualify as a "person aggrieved." The doctrine of invited error bars an appellant from complaining on appeal of an error that the appellant induced or invited during the proceedings below. *Tel-Phonic Services, Inc. v. TBS International, Inc.*, 975 F.2d 1134, 1137 (5th Cir. 1992) ("A party will not be heard to appeal the propriety of an order to which it agreed."); *King v. Armstrong World Industries, Inc.*, 906 F.2d 1022, 1025 (5th Cir. 1990) (declining to reach a hearsay objection because the appellant conceded in closing argument at trial the truth of the matter raised on appeal), *cert. denied*, 500 U.S. 942 (1991); see also *United States v. Green*, 272 F.3d 748, 754 (5th Cir. 2001); *United States v. Raymer*, 876 F.2d 383, 388 (5th Cir.), *cert. denied*, 493 U.S. 870 (1989). Here, the debtor, Webb, Cleveland, and Slack admitted in their pleadings or in open court that the trustee was entitled to the turnover of \$13,867.84. Record at 28-32, 59. Indeed, in his answer, Slack requested that the "Trustee's prayer for Defendants to turnover \$13,867.84 be granted" Record at 32. During the trial on June 19, 2002, Slack reaffirmed this admission and further

underscored the non-bankruptcy, probate nature of his grievances.³ Record at 457-458. Accordingly, the bankruptcy court -- relying upon the admissions of Webb, Cleveland, and Slack -- awarded the trustee the relief sought. Record at 4-5, 8.

Judge Hutcheson, writing for the Fifth Circuit in *Alabama Great Southern Railroad Company v. Johnson*, 140 F.2d 968 (5th Cir. 1944), observed that the doctrine of "invited error is, when justly and correctly applied, a wise and wholesome one." *Id.* at 971. Here, Slack conceded in the proceedings below that the trustee was entitled to the only relief sought, viz., turnover of \$13,867.84. On appeal, Slack now asks this court to vacate the bankruptcy court's final judgment granting that very relief. Appellant Brief at 45. In the face of this textbook example of invited error, the just and correct course is to deny Slack's appeal from a judgment to which he agreed in the proceedings below. Furthermore, because Slack invited the error undergirding his appeal to this court, he cannot be defined as a party whose rights or

³ THE COURT: Okay. Now, as I understand it, [Slack] filed an answer in which he admitted that the estate owned a one-quarter interest in the account; isn't that correct?

MR. SLACK: That's been the assumption, yes, as far as a one-quarter interest. However, there's only three names listed. There's only three beneficiaries to these Well [sic] Fargo accounts. Before they produce -- before they are forced to produce these documents to find out where the money has gone and why there is the amount there is right now, it may be that they've received a little bit more than one-fourth from [Slack], from what he has explained to me from the information, before this garnishment was resulting in these accounts.

Record at 457-458.

interests are directly and adversely affected by the final judgment of the bankruptcy court. See *Andreuccetti*, 975 F.2d at 416-417 (noting that the purpose of the “person aggrieved” requirement is to “insure ‘that bankruptcy proceedings are not unreasonably delayed by protracted litigation’”) (quoting *Matter of DuPage Boiler Works, Inc.*, 965 F.2d 296, 297 (7th Cir.), *cert. denied*, 506 U.S. 954 (1992)). Simply stated, Slack cannot be characterized as adverse to a judgment he invited. Thus, because Slack is not a “person aggrieved” by the bankruptcy court’s final judgment, Slack lacks standing and the court need not reach the merits of his appeal.⁴

⁴ Under traditional principles of standing, Slack “cannot rest his claim to relief on the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Thus, he is in no position to question, as he attempts to do, *see* Appellant Brief at 1, 14-21, the adequacy of service on the Bank. The requirement of personal jurisdiction over the Bank is an individual right of the Bank, which can be waived. *Insurance Corporation of Ireland, Limited v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). “[Slack] cannot prevail on appeal by arguing injury to [the Bank], which is not a party to this appeal.” *Searcy v. Houston Lighting & Power Company*, 907 F.2d 562, 564 (5th Cir.), *cert. denied*, 498 U.S. 970 (1990).


In like manner, Slack lacks standing to argue, *see* Appellant Brief at 36, that the trustee’s recovery of \$13,867.84 for the benefit of creditors is inadequate. “It is axiomatic that a trustee has the right to bring actions that will benefit the estate.” *Matter of Schimmelpenninck*, 183 F.3d 347, 359-360 (5th Cir. 1999) (holding that an individual creditor lacks standing to bring an action asserting a generalized injury to the debtor’s estate) The trustee having made no complaint about the adequacy of the recovery, Slack has no standing to do so.

IV. Conclusion

For the reasons discussed above, Slack's appeal from the judgment of the bankruptcy court is **DISMISSED**.⁵

SO ORDERED.

February 28, 2003.



A. JOE FISH
CHIEF JUDGE

⁵ Since standing is jurisdictional, dismissal is the appropriate disposition. *Paterson v. Texas*, 308 F.3d 448, 451 (5th Cir. 2002) (citing *United States v. Hays*, 515 U.S. 737, 742 (1995)).